

**From:** Eric Benedict  
**To:** Microsoft ATR  
**Date:** 11/16/01 4:14pm  
**Subject:** Microsoft capitulation decree...

To whom it may concern:

I noticed on a cnn web page that this email address was set up to collect comment on the pending agreement between Microsoft and the US DOJ et al. Based on the agreement which I have read and the public statements by the DOJ, I don't expect that there is much interest in my commentary; however, since there is a non-zero chance it might have an impact on reviewing the agreement, I'm writing this letter.

I am not a lawyer, but I can read and understand what the literal meaning of text is, and am quite capable of thinking inspite of the presence of ``legalese"...

I am against the agreement as it currently stands. Microsoft has been found guilty of illegal practices (and accepted previous consent decrees of similar actions {which it subsequently violated}). This agreement does not contain any punitive actions against Microsoft. While I would be disappointed in the lack of punitive action(s), I would accept such an agreement provided that it provides suitable mechanisms to prevent future improper behavior. As written, this agreement starts to provide such protections; however, they are effectively nullified by the vagueness of several exceptions. The ability to exercise the exceptions is left to the discretion of Microsoft and so this agreement provides no real check on Microsoft's behavior.

In particular, the Final Judgement III.D states that Microsoft must provide to ISVs, IHVs, etc., the API's and related documentation to allow for 3rd parties to interoperate with a Windows Operating System Product. This sounds good; however, in III.J.2(b) and (c) Microsoft does not have to release this information to someone who in Microsoft's opinion does not have a reasonable need. Furthermore, (d) states that someone who receives this information has to agree to submit to a 3rd party (of Microsoft's approval) their program for testing, at that person's expense. Combined, these exceptions pretty much allow Microsoft to exclude numerous and legitimate 3rd parties by either declaring carefully written standards or only approving 3rd party verifiers with excessive fees (and pricing out low budget developers).

Next, in III.H.2, Microsoft is supposed to allow users, et al., to designate a non-Microsoft Middleware product to be used in place of a Microsoft Middleware product. This also sounds good; however in III.H.3's second paragraph there are two exceptions: 1 where the Middleware product would be interacting with a server maintained by Microsoft or 2. that the 3rd party product does not implement some feature consistent with a Windows Operating System Product. Since Microsoft again gets to control what is required, they can assure that there is always at least one ``required" feature which only their Middleware provides. It is true that they must provide the specifications to any ISV who asks for the information, but only in a ``reasonably prompt" manner. During the intervening time,

a ``technical innovation" can easily occur at Microsoft, resulting in another new technical requirement. Thus, Microsoft can quite easily and legally keep any competing Middleware Product off of their platform by careful specification writing (and updating...).

I am sure that there are probably several other more subtle loopholes; however, these are so glaring that I was able to find them with little effort.

Thus, the exceptions in this agreement effectively nullify the restrictions on Microsoft's behavior. I strongly encourage that this agreement be, at a minimum, amended to close these loopholes. Ideally, I feel that this agreement should be re-written to include some form of a punitive measure given the overwhelming Findings of Fact against Microsoft. Leaving this agreement unmodified is, in my opinion, a complete capitulation to Microsoft.

Sincerely yours,

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